IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 186/2006
Ganpat Singh Rathore
Vs.
Rajasthan Agricultural Universaity Bikaner & Ors.

Date of Order : 08/02/2007

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Mukesh Vyas for the petitioner.
Mr. Manish Shishodia for the respondents.

BY THE COURT:-

By an application being I.A. No.74/07, the petitioner submits that the instant writ petition is squarely covered by the decision of Hon'ble Supreme Court in Purshottam Lal Das & Ors. Vs. The State of Bihar & Ors. 2006 AIR SCW 5325 and therefore, it may be decided finally.

I have heard learned counsel for the parties.

The facts and circumstances giving rise to the instant writ petition are that the petitioner was granted benefit of selection scales as granted to other similarly situated employees of the respondent and he enjoyed the benefit of selection scales continuously till he retired on attaining the age of

superannuation. The petitioner served the respondent for 39 years and two months and retired on 31st July, 2004 vide Annex.2. At the time of finalization of the retiral benefits, an audit objection was raised and an order to recover an amount of Rs. 1,18,863/- on account of over payment of pay and allowance has been passed vide Annex.5 dated 3.5.2005. Aggrieved by the order Annex.5 dated 3.5.2005 the petitioner has filed the instant writ petition.

It is contended by the learned counsel for the petitioner that the petitioner has already retired from service and after retirement no amount can be recovered without due process of law. In the instant case, the order of recovery Annex.5 dated 3.5.2005 has been made without affording an opportunity of hearing to the petitioner. The selection scales were granted to the petitioner by the respondents after considering the case of the petitioner and finding him eligible and entitled for the same and therefore, the respondents cannot be permitted to say that the selection scales have erroneously been granted to the petitioner.

In Purshottam Lal Das & Ors. Vs. The State of Bihar & Ors. (supra), Hon'ble Supreme Court held that since payments have been made without any representation or a misrepresentation, the appellant-Board could not possibly be granted any liberty to deduct or recover the excess amount paid

by way of increments at an earlier point of time. The act or acts on the part of the appellant-Board cannot under any circumstances be said to be in consonance with equity, good conscience and justice. The concept of fairness has been given a go-by. As such the actions initiated for recovery cannot be sustained under any circumstances.

Earlier to this, there are catena of decisions of Hon'ble Supreme Court taking the similar view.

In Shyam Babu Verma and Ors. Vs. Union of India and Ors. (1994) 2 SCC 521, Hon'ble Supreme Court held that since the petitioners therein received the higher scale due to no fault of theirs, it shall only be just and proper not to recover any excess amount already paid to them.

In Sahib Ram Vs. State of Haryana and Ors. 1995 Supp. (1) SCC 18, the Apex Court restrained the recovery of the payment already made to the appellant therein, as it was not on account of any misrepresentation made by the appellant therein that the benefit of the higher pay sclae was given to him, but by wrong construction made by the Principal for which the appellant therein cannot be held to be at fault.

In Bhagwan Shukla Vs. Union of India and Ors. AIR 1994 SC 2480, the Hon'ble Supreme Court observed that if basic pay of any employee is reduced with retrospective effect and employee was not granted opportunity to show cause, in such

circumstances, there would be flagrant violation of the principles of natural justice and order of reducing pay was set aside.

Keeping in view the decisions of Hon'ble Supreme Court, in my view, it cannot be said that the petitioner made any misrepresentation or played fraud in getting the higher pay. The fixation of the pay had been done by the employer and at any rate it was not at the instance or on the representation of the present petitioner and therefore, the order impugned to the extent raising demand of recovery amounting to Rs. 2,90,000/- after retirement of the petitioner on attaining the age of superannuation vide Annex.5 dated 3.5.2005 cannot be sustained and is liable to be quashed and set aside.

In the result, the writ petition is allowed and the order impugned Annex.5 dated 3.5.2005 is quashed and set aside to the extent of raising the demand of recovery of Rs. 2,90,000/-. The application being I.A. No.74/07 also stands disposed of. There shall be no order as to costs.

(H.R.PANWAR),J.

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